

## OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

### NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The State Superintendent of Education, pursuant to the authority set forth in section 3(b)(11) of the State Education Office Establishment Act of 2000, effective October 21, 2000 (D.C. Law 13-176; D.C. Official Code § 38-2602(b)(11)) (2011 Supp.) and section 2203(j)(2) of the District of Columbia School Reform Act of 1995, approved April 26, 1996 (P.L. 104-134; 110 Stat. 1321; D.C. Official Code § 38-1802.03(j)(2)) (2011 Supp.), hereby gives notice of the adoption of an emergency and proposed rule amending chapter 54 (Appeal Procedures for Denial of a Petition to Establish a District of Columbia Public Charter School) of subtitle A (Office of the State Superintendent of Education) of title 5 (Education) of the District of Columbia Municipal Regulations (DCMR) by clarifying and extending the procedures for an Eligible Applicant to appeal to the Office of the State Superintendent of Education (OSSE) from a decision by a District of Columbia Eligible Chartering Authority denying a petition to establish a public charter school in the District of Columbia. The emergency rule was adopted on April 13, 2012, and took effect at that time. The emergency rule will remain in effect until August 11, 2012, one hundred twenty (120) days from the date of adoption or until a final rule is published in the *District of Columbia Register*, whichever occurs first.

The proposed rulemaking maintains the regulatory framework of chapter 54 established effective May 22, 2009, published at 56 DCR 4108. The proposed amendments update and clarify the timeline for the submission of the Appeal Record and the Eligible Applicant's written submission in support of the appeal. The amendments also permit both the Eligible Applicant and the Eligible Chartering Authority to request a Record Review Hearing to review the findings of the Eligible Chartering Authority.

Emergency rulemaking action is necessary to ensure technical clarification and immediate enhancement of appeal rights and procedures for pending Applicants, to eliminate potential adverse impact of lack of full appeal rights, and consequently for the immediate preservation and promotion of the public welfare of the District's Eligible Applicants, the Eligible Chartering Authority, and District students and citizens. This amendment ensures equity and fairness to all Applicants and the Eligible Chartering Authority; eliminating potential adverse consequences due to a lack of enhanced appeal rights.

The State Superintendent of Education hereby gives notice of the intent to adopt the proposed rulemaking in not less than thirty (30) days after the date of publication of this notice in the *D.C. Register*.

**Chapter 54 (Appeal Procedures for Denial of a Petition to Establish a District of Columbia Public Charter School) of subtitle A (Office of the State Superintendent of Education) of title 5 (Education) of the District of Columbia Municipal Regulations (DCMR) is amended as follows:**

**Section 5400, GENERAL PROVISIONS, is amended to read as follows:**

**5400           General Provisions**

- 5400.1           A final written decision issued by an Eligible Chartering Authority denying a Petition to establish a public charter school in the District of Columbia is subject to review by an appropriate court of the District of Columbia or the State Superintendent of Education.
- 5400.2           These rules set forth procedures for an appeal to the State Superintendent of Education.

**Section 5401, FILING AND NOTIFICATION REQUIREMENTS, is amended to read as follows:**

**5401           Filing and Notification Requirements**

- 5401.1           An Eligible Applicant may appeal the Eligible Chartering Authority's final written decision to the State Superintendent of Education within fifteen (15) business days after the date of the Eligible Chartering Authority's decision.
- 5401.2           The notice of appeal shall contain the following information:
- (a)       The name of the Eligible Applicant including the name, signature, address, and telephone number of the Eligible Applicant's representative, and other relevant contact information;
  - (b)       The name of the Eligible Chartering Authority; and
  - (c)       The effective date of the Eligible Chartering Authority's final written decision denying a Petition.
- 5401.3           The Office of the State Superintendent of Education (OSSE) shall assign a case number to each appeal and provide written confirmation of receipt of the appeal to the Eligible Applicant and the Eligible Chartering Authority.
- 5401.4           A notice of appeal filed later than fifteen (15) business days after the date of the Eligible Chartering Authority's final written decision denying a Petition shall be deemed out of time and shall be rejected by the OSSE with written notification to the Eligible Applicant and the Eligible Chartering Authority.
- 5401.5           An Eligible Applicant's notice of appeal, the record, and all submissions related to an appeal shall be delivered to the OSSE, Attention: Office of

the General Counsel, Charter School Petition Appeals, at the OSSE's main address.

- 5401.6 All documents filed with regard to an appeal under this chapter shall include a Certificate of Service, signed by the authorized representative of the party filing a document.
- 5401.7 The Certificate of Service must state the following:
- (a) The date and the method of service (for example, mail, personal-delivery); and
  - (b) The names and addresses of the persons served in accordance with this chapter.
- 5401.8 When documents are mailed, three (3) business days shall be added to the mailing date for purposes of calculating time within this chapter.

**Section 5402, APPEAL RECORD, is amended to read as followed:**

**5402 Appeal Record**

- 5402.1 Within ten (10) business days after the date of a notice of an appeal, the Eligible Chartering Authority shall deliver to the OSSE and to the Eligible Applicant a copy of the final written decision denying the Petition and the record related to the Petition.
- 5402.2 The record shall consist of all documents relevant to the Petition and the Eligible Chartering Authority's final written decision denying the Petition including without limitation:
- (a) The Petition to establish a public charter school, including all exhibits to the Petition;
  - (b) The transcript of any public hearings or testimony before the Eligible Chartering Authority with regard to the Petition subject to appeal, including all exhibits referenced in the transcript;
  - (c) All other materials related to the Petition submitted by the Eligible Applicant to the Eligible Chartering Authority; and
  - (d) The final written decision of the Eligible Chartering Authority

**5403 Written Submissions**

- 5403.1 Within fifteen (15) business days after the date that the Eligible Chartering Authority delivers the Appeal Record referred to in § 5402, the Eligible Applicant shall submit to the OSSE a double spaced written submission in support of the appeal.
- 5403.2 The Eligible Chartering Authority shall respond within fifteen (15) business days after the date of the Eligible Applicant's submission referred to in § 5403.1, with a double spaced written response to matters that the Eligible Applicant raised.
- 5403.3 Written submissions shall set forth precise statements in support of the position being taken on appeal with regard to challenging or supporting the Eligible Chartering Authority's written decision including, as appropriate:
- (a) Specific reasons and basis for disagreeing with the Eligible Chartering Authority's final written decision; and
  - (b) How the Eligible Chartering Authority's written decision should be altered or reversed, based upon specific facts in the record supporting the written submission on appeal including any pertinent legal authority; or
  - (c) Specific reasons and basis in the record to confirm the Eligible Chartering Authority's final written decision.
- 5403.4 An Eligible Applicant's failure to make a timely written submission to the State Superintendent under this chapter shall constitute an automatic withdrawal of the notice of appeal.
- 5403.5 The OSSE shall notify the parties in writing when an appeal is deemed to have been withdrawn, with no further involvement of the OSSE with regard to the appeal.

**Section 5404, FINAL DECISION, is repealed and replaced with:**

**5404 Record Review Hearing**

- 5404.1 The Eligible Chartering Authority and the Eligible Applicant shall both have the option to request a Record Review Hearing to review the findings of the Eligible Chartering Authority before the OSSE, within five (5) business days after the filing of the Eligible Chartering Authority's written submission referred to in § 5403.2.
- 5404.2 The Eligible Chartering Authority and the Eligible Applicant shall request a hearing through a written submission to the OSSE. A request filed later

than five (5) business days after the filing of the Eligible Chartering Authority's written submission shall be deemed untimely and shall not be considered by the OSSE.

5404.3 If a Record Review Hearing is requested by the Eligible Chartering Authority or the Eligible Applicant, the OSSE shall schedule a hearing within ten (10) business days of its request.

5404.4 The Record Review Hearing shall consider only evidence in the record. New evidence shall not be introduced at the hearing.

#### **5405 Final Decision**

5405.1 The State Superintendent's review shall be limited to the record, record review hearing, and written submissions of the Eligible Chartering Authority and the Eligible Applicant.

5405.2 The State Superintendent shall uphold the Eligible Chartering Authority's decision if it is based on Substantial Evidence in the record.

5405.3 The State Superintendent's final written decision shall affirm, reverse in whole, or remand for further consideration the Eligible Chartering Authority's decision.

5405.4 If the State Superintendent reverses the Eligible Chartering Authority's decision, and grants a Petition, the State Superintendent's decision shall instruct the Eligible Chartering Authority to grant the Petition within fifteen (15) business days from the date of the State Superintendent's final written decision.

5405.5 The State Superintendent shall provide both parties with a copy of its final written decision.

#### **Section 5499, DEFINITIONS, is amended to read as follows:**

##### **5499 Definitions**

5499.1 The following terms and phrases shall have the meanings ascribed:  
**Certificate of Service** means a signed written statement indicating that documents filed with or issued by the OSSE have been either delivered or mailed to the other appropriate parties.

**Eligible Applicant** means a person, including a private public or quasi public entity, or an institution of higher education as defined in Section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a)), that seeks to establish a public charter school in the District of Columbia

pursuant to the District of Columbia School Reform Act of 1995, approved April 26, 1996 (110 Stat.1321-107, P.L. 104-134; D.C. Official Code §§ § 38-1802.02, *et seq.* (2001 & 2011 Supp.)(as amended)).

**Eligible Chartering Authority** means the District of Columbia Public Charter School Board or any one entity authorized as an eligible chartering authority in the District of Columbia.

**OSSE** means the Office of the State Superintendent of Education.

**Petition** means a written application by an Eligible Applicant to establish a public charter school in the District of Columbia.

**Record Review Hearing** means an optional hearing before the State Superintendent or the State Superintendent's designee requested by an Eligible Chartering Authority or Eligible Applicant during which the previous record in an appeal is reviewed and clarified by the parties.

**State Superintendent** means the State Superintendent of Education and may include the State Superintendent's designee.

**Substantial Evidence** means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion or finding.

Persons wishing to comment on this rule should submit their comments in writing to Office of the State Superintendent of Education, 810 First Street, NE, 9th Floor, Washington, D.C. 20002, Attention: Jamai Deuberry (phone number (202) 724-7756), Office of General Counsel, or to [osse.publiccomment@dc.gov](mailto:osse.publiccomment@dc.gov). All comments must be received no later than thirty (30) days after publication of this notice in the *D.C. Register*. Copies of this rulemaking may also be obtained from the OSSE website at [www.osse.dc.gov](http://www.osse.dc.gov) or upon request at the above referenced location.